THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18584 of 1999

Dated:05.12.2007

Between:

Smt.D.Chinna Karunamma and another.

…Petitioners

and

The District Collector,
Krishna District,
and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18584 of 1999

ORDER:

The two petitioners are residents of a Village in Krishna District called Padamalapalli, Hamlet of Pedaparapudi Mandal. The first petitioner owns small extent of land in Survey No.523/1 and the second petitioner owns an extent of Ac.0.04 cents in Survey No.523/4. The first respondent issued notification dated 12.06.1999 under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity), proposing to acquire an extent of Ac.0.16 cents of land including the land belonging to the petitioners. The acquisition is for a public purpose, namely, pathway for burial ground. The enquiry under Section 5-A of the Act was dispensed with, and the declaration was published on 17.07.1999. Assailing the land acquisition, the petitioners invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

It is the case of the petitioners that the burial ground which is being exclusively used by the persons belonging to the Scheduled Caste community has been in existence for several years and persons using it never faced any difficulty in burying their dead by carrying the corps and the existing pathway is of 15 feet wide. Therefore, the public purpose does not exist to acquire the lands belonging to the petitioners, which are costly and paddy fields. They also contend that the acquisition was initiated at the instance of respondents 4 and 5,

who are influential, and as the petitioners belong to other political party. They contend that acquisition is mala fide.

A counter affidavit is filed. It is admitted that burial ground in Survey No.478 has a narrow pathway, but in rainy season, it is becoming difficult to carry the dead on the said pathway. Therefore, it was proposed to acquire the land admeasuring Acs.0.16 cents in Survey Nos.523/1 and 523/4p including the small extents of land belonging to the petitioners. The land proposed, was inspected on 08.05.1999. The second petitioner and three others who own land in Survey No.523/4 (part) also gave their consent for acquisition. The first petitioner is a resident of Visakhapatnam, and she was not present when the land was inspected. Explaining the rationale of acquiring the land for providing pathway in paragraph 4 of the counter affidavit it is stated as under.

> …it is to submit the burial ground for the villagers of Pedamalapalli, H/o.Ventrapragada is situated in R.S.No.478. There is a metal road from Sivapuram, H/o.Ventrapragada to Pedamalapalli H.W. only (i.e.) upto existing houses in R.S.No.520. In the rainy season it is very difficult to carry out the dead bodies on the footpath existing and it is very narrow also. The distance is from the existing houses to burial ground 1316 links (868 feet). On the narrow pathway the villagers are felt much difficult to carryout the dead bodies to the burial ground and it is quite essential to acquire land for formation of pathway and the villagers are frequently requesting to the officials during Janmabhoomi programme for the way to the Burial ground.

This Court heard the learned Counsel for the petitioners who strenuously argued that when the burial ground is already a pathway the acquisition of land of the petitioners for providing additional pathway is mala fide and there is no public purpose involved in the acquisition. She also submits that having regard to existence of the pathway there is no great urgency for dispensing with the enquiry under Section 5-A of the Act, and therefore, the valuable right of the petitioners to represent has been denied vitiating the land acquisition. She placed strong reliance on the decision of this Court in **Kilarapu Satyavati v. District Collector, Kakinada, East Godavari District**[1]. **Per contra**, the learned Assistant Government Pleader submits that whether there is a public purpose for acquiring the land is a matter, which is beyond the judicial review. He secondly contends that even if such review is permissible, it can only be on the limited ground and acquisition proceedings can be set aside if they are found to be vitiated by illegalities and mala fides. He also points out that the second petitioner has already given consent and the first petitioner,

who is resident of Visakhapatnam may not have serious objection for acquisition. The respondents filed counter affidavit on 15.10.1999 duly serving a copy thereof on the learned Counsel for the petitioners. In spite of the same, no reply is filed. Therefore, it stands proved that the first petitioner is not resident of the Village and she may not suffer much prejudice if small extent of Ac.0.08 cents of land belonging to her is acquired, especially, when the law adequately contains provisions for compensating the loss of the land.

Insofar as the dispute with the enquiry under Section 5-A of the Act is concerned, it is well settled that the right conferred under Section 5-A of the Act to raise objection for acquisition is a valuable right. Therefore, the competent authority cannot dispense with enquiry under Section 5-A of the Act in a routine manner without application of mind. In **Kilarapu Satyavati** (supra), this Court held that exercise of power under Section 17(4) of the Act by the competent authority to dispense with enquiry under Section 5-A of the Act is a matter of subject to satisfaction, but it has to be only on application of mind having regard to the various provisions of the Act and situation as obtaining on the ground and also Section 17(2) of the Act. Dealing with this aspect, this Court pointed out that even as per Section 17(2) of the Act, certain situations warrant the urgency clause in the acquisition. It was held therein as under.

> Even though no award is passed acquiring the land, subsection (2) of Section 17 of the Act enumerates few situations where the urgency can be presumed. But Section 17(2) of the Act is not exhaustive. Section 17(2)(b)(ii)(a) of the Act is to the effect that whenever in the opinion of the Collector it becomes necessary to acquire immediate possession of any land for construction or extension or improvement of any structure for the common use of the inhabitants, he may acquire the immediate possession of the land. As explained in the counter affidavit by the respondents, the existing compost yard in the middle of Ramachandrapuram town is already filled and any further dumping of the urban waste would cause health and hygienic problems. In a considered opinion of this Court, there is a real urgency for invoking subsection (4) of Section 17. The power was exercised validly and no exception can be taken for that action. Further, as held by the Supreme Court in the two above cited decisions, it is the subjective satisfaction of the acquiring authority that matters while invoking urgency clause in subsection (4) and the point on the question of urgency cannot be stretched too far to replace satisfaction of the acquiring authority by courts' satisfaction.

As explained in the counter affidavit the users of burial ground in

Survey No.478 are facing it difficult to bury the dead in rainy season. Therefore, to provide for all weather road/pathway acquisition was sought, and therefore, urgency clause invoked was proper.

Learned Counsel for the petitioners lastly submits that the petitioners have raised paddy. If that be so, at the time of passing of award the Land Acquisition Officer may take the same into consideration and provide for compensation adequately.

The Writ Petition, with the above observation, is accordingly dismissed. This Court, however, is not inclined to make any order as to costs.

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(V.V.S.RAO, J)

05.12.2007
vs

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[1] 2006 (2) ALD 342